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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,701	12/05/2003	Tawei Tsao		9993

29745 7590 03/21/2005

JOE NIEH  
18760 E. AMAR ROAD #204  
WALNUT, CA 91789

EXAMINER

WALCZAK, DAVID J

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/728,701	<b>Applicant(s)</b> TSAO ET AL.	
	<b>Examiner</b> David J. Walczak	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-21 is/are allowed.
- 6) ☒ Claim(s) 1-4 and 10-12 is/are rejected.
- 7) ☒ Claim(s) 5-9 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

The disclosure is objected to because of the following informalities: Lines 8 and 9 of page 2 should be completed and on page 5, line 6, "fluid 4" should be --fluid 5--. Appropriate correction is required.

### ***Claim Objections***

Claim 10 is objected to because of the following informalities: On the last line of claim 10, "release" should be --released--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Prussin et al. (hereinafter Prussin). In regard to claim 1, Prussin discloses an enclosed opening means 24" (see Figure 6) for an elongated tubular housing 12" having a sealed end (not shown) and an open end 18" with a fluid disposed near the sealed end of the tubular housing 12" (the fluid being in compartment 38") comprised of a cylinder with an open end and a sealed end 72 wherein the cylinder has a sealing diameter therearound that

is approximately equal to the inside diameter of the tubular housing 12" to provide a seal therebetween and wherein an outside diameter at the sealed end 72 is smaller than the inside diameter of the tubular housing and a fracture line 74 is provided near the sealed end 72 on the other side of the sealing diameter where the fluid is disposed and wherein the enclosed opening means 24" is disposed in the tubular housing 12" with the open end towards the fluid (in compartment 38") to thereby seal the fluid within the tubular housing. It is noted that the tubular housing, opening means and fluid are all considered to be claimed elements (in both claims 1 and 14) as per the language in the last three lines of the claims. In regard to claim 2, an "applicator tip" is affixed to the open end of the housing 12" (the flat outer surface of neck 18" defines an "applicator tip"). In regard to claim 3, the open end of the housing 12" (the opening in the threaded neck) has a smaller inside diameter than the housing. In regard to claim 4, portion 30" of the opening means 24" defines an "elongated member" disposed "near" the sealed end of the housing. Further, element 76 defines an "elongated member" disposed "near" the sealed end.

Claims 10, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Wirt. In regard to claim 10, Wirt discloses an enclosed opening means comprised of a tubular housing 14 having first and second sealed ends with a reduced outside diameter at the second sealed end 46 and a fracture line 50 near the second sealed end and a tube 13 having first and second open ends wherein the first open end encloses the second sealed end of the housing 14 such that it forms a "seal" around the second sealed end aft of the fracture line (viewing Figure 2, the portion of tube 13 that

contacts housing 14 adjacent the fracture line 50 is considered to "form a seal" aft of the fracture line, i.e., a seal, at least to some degree, will be formed). In regard to claim 11, an applicator tip 16 is affixed to the second open end of the tube. In regard to claim 12, an elongated member 58 is disposed in the tubular housing.

### ***Allowable Subject Matter***

Claims 5-9 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 14-21 are allowed.


### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Miller and Gilliam et al. references are cited for disclosing other applicators having enclosed opening mechanisms.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 703-308-0608. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak  
Primary Examiner  
Art Unit 3751

DJW  
3/18/05